Calendar No. 436

98TH CONGRESS, 1st Session | SENATE | REPORT No. 98-255

AUTHORIZING THE SECRETARY OF THE INTERIOR TO SELL CERTAIN LANDS IN IDAHO

SEPTEMBER 29 (legislative day, SEPTEMBER 26), 1983.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 862]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 862) to amend the Act of May 31, 1962 (76 Stat. 89), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 862, as introduced by Senators McClure and Symms on March 18, 1983, would amend Public Law 87-469, to extend a preference right to purchase certain lands the Secretary of the Interior may offer under the 1962 Act. The fair market value of these lands would be set as of May 31, 1967, less increased value resulting from development or improvements. The right to purchase is limited to a 1 year application period after the date of enactment. The Secretary shall complete all authorized sales within 2 years after receipt of the application.

BACKGROUND AND NEED

The first Federal land surveys of lands along the Snake River in eastern Idaho were made in the mid-1800's. These surveys were the basis for land description in convening land, under public land laws to homesteaders and settlers along the river. Additional Federal surveys in 1920, discovered substantial errors in the original surveys resulting in land being omitted from the initial surveys and claimed as Federal lands by the succeeding surveys.

The original owners and heirs in the meantime had proceeded to develop these lands, build homes, pay taxes and otherwise occupy land

11-010 O

5313-27

under the assumption of ownership. Titles to the lands were clouded by the surveys claims of Federal ownership.

In 1962, Congress passed Public Law 87–469, giving the Secretary of the Interior discretionary authority to sell certain disrupted lands to qualified persons at fair market value less improvements and with certain reservations. Some sales have occurred and land values have appreciated considerably since 1962.

This is the status of omitted lands program to date.

	Areas
Total omitted land acreage	15, 500
Acreage identified for retention	8, 800
Acreage identified for disposal	6, 700
Disposal activities—	
Acreage disposed of to date	5, 950
Remaining acreage	750
Status of remaining acreage:	
Applications filed, lands not purchased (cases pending)	350
No applications filed	400

Legislative History

S. 862 was introduced on March 18, 1983. The Public Lands and Reserved Water Subcommittee held a hearing on S. 862 on May 17, 1983. The Administration does not object to enactment of S. 862 if amended as specified by the Administration. In an open business session on August 4, 1983, the Senate Committee on Energy and Natural Resources ordered S. 862 reported favorably without amendment.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources in an open business session on August 4, 1983, by a majority vote of a quorum present recommends the Senate pass S. 862 without amendment.

The rollcall vote on reporting the measure was 16 yeas, 3 nays as follows:

YEAS	NAYS
Mr. McClure	Mr. Metzenbaum [1]
Mr. Hatfield	Mr. Tsongas
Mr. Weicker [1]	Mr. Bradley
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Chaffee	
Mr. Heinz [1]	
Mr. Johnston	
Mr. Jackson	
Mr. Bumpers	
Mr. Ford	
Mr. Matsunaga [1]	

[1] Indicates voted by proxy.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 12, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 862, a bill to amend the Act of May 31, 1962 (76 Stat. 89), as ordered reported by the Senate Committee on Energy and Natural Resources, August 4, 1983.

This bill amends Public Law 87–469 to allow parties with preference rights for certain lands in Idaho to purchase these lands at their fair market value as of May 31, 1967 (rather than at the current fair market value). Assuming all the lands involved would be purchased in either case, and based on information from the Bureau of Land Management, it is estimated that receipts to the Federal Government will be reduced by approximately $0.5 million as a result of enactment of this legislation.

Enactment of this bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Rudolph G. Penner, *Director.*

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 862 as reported. S. 862 would amend the Act of May 31, 1962 (76 Stat. 89) to allow the Secretary of the Interior to sell certain lands in Idaho to individuals who qualify.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 862.

Executive Communications

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive Agency recommendations relating to S. 862 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 17, 1983.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 862, a bill "To amend the Act of May 13, 1962 (76 Stat. 89)."

We would not object to enactment of S. 862 if it is amended as we suggest.

S. 862 would amend the Act of May 31, 1962, which authorizes the Secretary of the Interior to sell at his discretion, at appraised fair market value, certain omitted lands located in the vicinity of the Snake River in Idaho. In addition, section 2 of the 1962 Act gives a preference right to prospective purchasers who had improved, cultivated, or occupied the lands before May 31, 1961, under color-of-title or as a riparian owner, or whose ancestor or predecessor in title had taken such action.

The Act of May 31, 1962, was enacted in an effort to resolve a variety of longstanding problems involving lands adjacent to the Snake River. The first surveys of the meander lines of both the South Fork and Henry's Fork of the Snake River were made between 1870 and 1890. After several years it became apparent that the meander survey along portions of the river did not follow its actual course. Early settlement of the area was concentrated along the river, taking advantage of readily available water that was required for irrigation. As more intensive settlement and development took place, many controversies developed over ownership of the lands abutting the river.

A reconnaissance survey of the river was conducted in 1922. The surveyor reported the existence of much unsurveyed land between the originally established meander line and the actual course of the river. Subsequent limited surveys were conducted at critical points along the river, but it was not until 1957 that a comprehensive survey of the area was initiated. That survey established the mean high water line of the river. The lands between the original survey and the latter survey, the lands that are called omitted lands, were determined to still be in the public domain, with title vested in the United States.

The 1962 Act gave the Secretary of the Interior the authority to offer the omitted lands for sale at their fair market value. The Act also authorized the Secretary to reserve the right of public access and such other reservations across the lands as deemed appropriate and consonant with the public interest in preserving public recreational values in the lands.

On March 12, 1971, the Bureau of Land Management (BLM) suspended action on the omitted lands claims pending congressional consideration of a proposed amendment to the 1962 Act. The suspension was vacated on September 24, 1971, as to those claims where the claimant expressed a desire to proceed under existing law and regulations. On November 19, 1972, the suspension on processing claims was lifted entirely.

The omitted lands sales program is 95 percent complete, and only 350 acres remain to be sold. Those lands have not been sold for a

variety of reasons. Some occupants have opposed the United States' characterization of the lands as public lands and have initiated litigation to resolve the question. Other people have objected to paying the current fair market value of the land.

The remaining 350 acres represent some of the most valuable omitted lands. They include 250 acres of farmland valued at approximately $250 per acre, and 100 acres of commercial land valued at $10,000 per acre. Thus, the total value of all lands remaining to be sold is approximately $1,062,500.

The first section of S. 862 would amend section 2 of the 1962 Act in several ways. First, it would require that the purchase price of any lands sold under the 1962 Act be established on the basis of the fair market value of the lands as of May 31, 1967. Second, any applicant claiming a preference right under section 2 would be required to file an application for such right within one year of the date of approval of S. 862, in accordance with regulations to be promulgated by the Secretary of the Interior. Any person claiming a preference right for omitted lands whose existence is disclosed by surveys completed after the effective date of the Act would be required to file an application within one year of notice that the lands have been found to be omitted. Failure to file the required applications within the one-year period would constitute an abandonment of the preference right. The preference right would then expire, could not be reasserted, and the provisions of the first section of the 1962 Act would apply. Third, the Secretary would be required to complete all sales authorized by section 2 of the 1962 Act, as amended, within two years after receiving application for such lands.

Section 2 of S. 862 would provide that nothing in S. 862 or in any amendment to the 1962 Act shall be deemed to create a right or equity in any person for reimbursement of money paid for lands acquired under the 1962 Act prior to enactment of this legislation.

We support the provisions of S. 862 that would require claimants to file applications within one year, and we do not object to the two-year deadline for completion of sales. We also support section 2 of the bill, which would specify that previous purchasers would not be entitled to reimbursement for moneys paid for omitted lands purchased prior to the enactment of S. 862.

However, we object to the provision in proposed new section 2(a) which would allow preference right holders to purchase omitted lands at their fair market value as of May 31, 1967. This would grant a windfall to the remaining purchasers of the 5 percent of the land not yet sold. It also would be inequitable to previous buyers who paid fair market value as of the date of their purchase. Finally, the provision would be unfair to the general public, for whom the public lands are held in trust and managed by the Department of the Interior, since it would require sale prices substantially below the fair market value of about $1 million. We believe the fairest approach is to calculate the fair market value as of the date that the lands are sold.

Therefore, we recommend that proposed section 2(a) of the 1962 Act be amended to require holders of preference rights to purchase omitted lands at their fair market value as of the date of sale. With that amendment, section 2 of S. 862 could be deleted in its entirety.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GARREY E. CARRUTHERS,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 862 as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 87-470—MAY 31, 1962

PUBLIC LAW 87-469

AN ACT To authorize the Secretary of the Interior to sell certain public lands in Idaho

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, in his discretion, is hereby authorized to sell at not less than their fair market value, as determined by the Secretary by appraisal, taking into consideration any reservations specified by the Secretary pursuant to sections 3 and 4 of this Act, any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries which have been, or may be, found upon survey to be omitted public lands of the United States, which lands are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

[SEC. 2. Any citizen of the United States who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied any of the lands subject to the operation of this Act, or whose ancestors or predecessors in title have taken such action, shall, if such lands be offered for sale by the Secretary, have a preference right to purchase such lands at their fair market value (which shall not include any increased value resulting from the development or improvement thereof for agricultural or other purposes by the applicant or his predecessors in interest) under such rules and regulations as the Secretary may prescribe for the operation of this Act.]

SEC. 2. (a) Notwithstanding the provisions of section 1 of this Act, any citizen of the United States who, in good faith under color of title or claiming as a riparian owner, has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied any of the lands subject to the operation of the Act, or whose

ancestors or predecessors in title have taken such action, shall, if such lands be offered for sale by the Secretary, have a preference right to purchase such lands at their fair market value as of May 31, 1967 (which shall not include any increased value resulting from the development or improvement thereof for agricultural or other purposes by the applicant or his predcessors in interest), under such rules and regulations as the Secretary may prescribe for the operation of this Act.

(b) An applicant claiming a preference right, as defined in subsection (a) of this section, shall file an application therefor within one year after the date of approval of this Act, in accordance with the regulations prescribed by the Secretary. Failure to file an application within the time specified shall conclusively constitute an abandonment of the preference right which shall then expire and cannot thereafter be reasserted, and the provisions of section 1 of this Act shall apply.

(c) Where a survey completed after the enactment of the amendment to this section discloses the existence of omitted lands subject to the operation of this Act, any person claiming a preference right, as defined in subsection (A) of this section, shall file an application therefor within one year after receiving notice that the land has been found to be omitted. Failure to file an application within the time specified shall constitute an abandonment of the preference right which shall then expire and cannot thereafter be reasserted, and the provisions of section 1 of this Act shall apply.

(d) The Secretary shall complete all sales authorized by this section within two years after receiving application therefor.

SEC. 3. All patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal, oil, gas, oil shale, phosphate, potash, sodium, native asphalt, and and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same.

SEC. 4. The Secretary, in his discretion, may reserve in patents issued under this Act the right of access to the public through the lands and such other reservations as he may deem appropriate and consonant with the public interest in preserving public recreational values in the lands.

SEC. 5. The Secretary is hereby authorized to prescribe all necessary rules and regulations for administering the provisions of this Act, including, without limitation, the determination of conflicting claims arising hereunder.

Approved May 31, 1962.

O